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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,263	11/21/2003	Edward Paul Carlin	9435	2795

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

CHAPMAN, GINGER T

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/719,263

Applicant(s)

CARLIN, EDWARD PAUL

Examiner

Ginger T. Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/25/04 &amp; 2/6/06</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 January 2006 has been entered.

### ***Status of the claims***

Claim 6 is cancelled by way of Applicants' amendment filed 31 January 2006; claims 1-5 and 7-12 are pending in the application.

### ***Claim language interpretation***

Examiner notes that the terminology "intermittently" and "continuously" has not been specifically defined by applicants and thus will be given their broadest customary interpretation, i.e. the dictionary definition, in light of the specification. As set forth on p. 6, l. 23 and p. 7, l. 14, of the specification, the width dimension can vary intermittently along the length dimension as shown fig. 3 or the width dimension can vary continuously as shown in fig. 4.

Therefore, in light of the specification and the dictionary definition of "intermittently", i.e. "coming and going at intervals: not continuous; not happening regularly or continuously", the terminology "intermittently" is defined as "not continuous". In light of the specification and the dictionary definition of "continuously", i.e. "marked by uninterrupted extension in space, time or

sequence”, and the dictionary definition of “uninterrupted”, i.e. “unbroken uniformity or continuity” the terminology “continuous” is defined as “uninterrupted or unbroken continuity”.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites that the width dimension varies intermittently while claim 5 recites that the width dimension varies continuously; claim 5 depends directly from claim 1. As noted *supra*, “intermittently” is defined as “not continuous”, therefore, claim 5 cannot further limit “intermittently” by reciting “continuously” as the terms refer to mutually exclusive characteristics and the width dimension cannot simultaneously be both intermittent and continuous.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “continuously” in claim 5 is used by the claim to mean “further limiting the width dimension that varies intermittently”, while the accepted meaning is “not intermittent.” The term is indefinite because the specification does not clearly redefine the term.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Schoelling (US 2001/0014348 A1) as evidenced by Hirschman (US 4,175,561).

With regard to claim 1, as seen in Figures 1-8, Schoelling discloses a tampon (10) for feminine hygiene (p. 1, [0014]) comprising an insertion end (14), a withdrawal end (16), a center region (18), a longitudinal axis (fig. 7), and an outer surface (34); the tampon being comprised of compressed fibrous material (p. 1 [0001, 0014]); and the outer surface of the tampon comprises a plurality of recessed portions (figs. 1 and 4 (24, 28, 30, 32)); each of the recessed portions comprising a length dimension and a width dimension (p. 1, [0016]; and the width dimension varies intermittently as measured along the length dimension (p. 1, [0018]: fig. 1 (30)).

Schoelling discloses at p. 2, [0020] that the recessed portions (24, 28, 30, 32) in the form of recessed perforations, holes and apertures of varying sizes and geometric configurations of varying and regular shapes such as triangular, circular and square shapes are topographical features which serve to increase the surface area of the outer surface of the tampon thereby increasing the effective absorbing surface area of the outer surface of the tampon. This general principle is evidenced by Hirschman stating at col. 1, ll. 23-46 and at col. 3, ll. 20-45 that recessed portions in the form of pin-holes serve to increase the surface area and absorptivity of the outer surface of the tampon and at col. 3, ll. 43-46 that varying the number, size and depth of the holes varies the absorptive capacity of the outer surface.

Claims 2-5, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoelling ('348).

With regard to claim 2, Schoelling discloses the largest width dimension is located in the insertion end (p. 2, [0022]).

With regard to claim 3, Schoelling discloses the largest width dimension is located in the withdrawal end (figs. 1 and 4 (30); fig. 3: p. 1, [0018], p. 2, [0021]).

With regard to claim 4, Schoelling discloses the smallest width dimension is located in the center region (p. 2, [0026]).

With regard to claim 5, Schoelling discloses the width dimension varies continuously as measured along the length dimension (figs. 1 and 4 (28, 32; p. 1, [0005, 0017]).

With regard to claim 7, Schoelling discloses the recessed portions are evenly spaced (figs. 1 and 4).

With regard to claim 11, Schoelling discloses the withdrawal end (16) comprises a withdrawal member (26).

Claims 8-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoelling ('348) in view of Schoelling (US 2002/0151859 A1).

With regard to claims 9 and 10, Schoelling ('348) discloses the tampon being comprised of compressed fibrous material but does not expressly disclose the tampon further comprising a core which is highly compressed **as recited in claim 10** and thus the fibrous material would necessarily have varying density over a cross section of the tampon **as recited in claim 9**.

Art Unit: 3761

Schoelling ('859) at p. 3, [0037] teaches the ability of a core which is highly compressed to ensure the stability and column strength of the tampon during digital insertion of the tampon into a body cavity, and teaches at p. 1, [0008] that such a core additionally reduces the risk of leakage by increasing the fiber quantity available for absorption of body fluid in the area of the compressed core after the tampon is inserted, thus disclosing a desire for the tampon to have a highly compressed core necessarily and inevitably resulting in varying density over a cross-section of the tampon. As seen in Figures 3 and 4, Schoelling '859 discloses the tampon (30) comprises a core (38) which is highly compressed. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tampon of Schoelling '348 comprising a highly compressed core as taught by Schoelling '859 in order to provide a tampon that has sufficient column strength to be digitally inserted and increased fiber quantity to reduce the risk of leakage.

With regard to claim 8, Schoelling '859 discloses the tampon having uniform density over a cross-section of the tampon (p. 1, [0009, 0011]).

With regard to claim 12, Schoelling '859 discloses the withdrawal end (34) further comprises a finger indent (48) p. 3, [0040].

### ***Response to Arguments***

Applicant's arguments filed 31 January 2006 have been fully considered but they are not persuasive.

I. Applicant submits that the outer surface of the tampon of Schoelling comprises fluid impervious and fluid pervious portions while the instant claimed tampon comprises a fluid pervious outer surface.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the whole outer surface of the instant claimed tampon is fluid pervious) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, examiner notes the outer surface of Schoelling is disclosed by Applicants' specification at p. 4, l. 14 and p 8, ll. 10-20 as a suitable embodiment of the outer surface of the instant claimed tampon.

II. Applicant submits that (1) the present invention increases the outer surface area of the tampon by using recessed portions to provide increased tampon outer surface area for the absorption of fluids while the tampon of Schoelling is enclosed within a cover having perforations thus the cover of Schoelling does not increase the outer surface area of the tampon to provide for increased moisture absorption, thus Schoelling teaches away from the instant claimed invention because the outer cover of Schoelling decreases the amount of fluid absorbed at the surface and (2) Schoelling teaches that restriction of the outer surface absorbency of a tampon through the use of a fluid impervious plastic material layer with holes can lead to desired expansion characteristics but does not teach increased absorption of fluids for the whole outer surface of the tampon.



This argument is not persuasive for the following reasons:

1) Schoelling expressly states at p. 2, [0020] with regard to the recessed portions and surface area of the surface of the tampon:

It can be seen that each of said holes 28 has a conical shape being radially inwardly extended to the outer surface 34 of the absorbent body 12. Hereby, the absorption velocity can be increased due to the fact that the effective absorbing surface area of the outer surface 34 of the absorbent body 12 is increased.

Thus Schoelling discloses that the effective absorbing surface area of the outer surface of the tampon is increased. Stated more accurately, Schoelling discloses increasing the absorptive surface area by means of recessed portions. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, i.e., the whole outer surface of the instant claimed tampon is fluid pervious, are not recited in the rejected claims.

(2) Schoelling does not teach that restriction of the outer surface absorbency of a tampon through the use a fluid impervious plastic material layer with holes can lead to desired expansion characteristics because: (A) the cover does not restrict expansion at all because the cover is pleated to expand with the body of the tampon when the tampon expands; and (B) Schoelling expressly discloses at p. 2, [0022] that it is the dimensions of the recessed portions that lead to the desired expansion, it is not the cover that leads to the expansion, in particular Schoelling states:

Art Unit: 3761

Due to this smaller dimension of the perforations 30', 32' near the withdrawal end 16 of the tampon 10, the expansion of the withdrawal end 16 is restricted so that, when the tampon 10 is withdrawn from the body cavity, the diameter of said withdrawal end 16 of the tampon 10 is somewhat reduced as shown in FIG. 5....

The degree of perforation 24 can affect the absorbency, particularly the absorption rate or absorption rate of the tampon, but the expansion of a special area of tampon 10, taken absolutely and in relation to each other, can be defined and adjusted.

Thus Schoelling discloses that it is the recessed portions and the size and geometrical shape of the recessed portions that lead to the desired expansion characteristics; the cover does not restrict the expansion because the cover is pleated and expands with the tampon body as disclosed at p. 3, [0038]:

As shown in FIG. 8, the cover 122 extends substantially into a constriction 120, such as a dome-shaped introduction end 114. This doming causes overlapping folds 136 and other deformations to occur in the cover 122 at the domed introduction end 114. In use, the introduction end 114 of the tampon 110 can expand completely as soon as it is engaged by body fluid. This characteristic can be enhanced by the fact that said cover 122 having overlapping folds 136 at the introduction end 114 of the tampon 110 is substantially not bonded to the absorbent structure 112, so that the absorbent body 112 with its cover 122 can freely expand if engaged by body fluid.

Schoelling states that the purpose of the cover is to prevent loss of fibers (p. 3, [0030]).

Applicant argues that Schoelling does not teach increased absorption of fluids for the whole outer surface of the tampon. Schoelling does teach increased absorption for the whole outer surface of the tampon by means of the recessed portions because the outer surface includes the recessed portions and without the recessed portions the outer surface would be fluid impervious and thus have no absorption while the recessed portions render some portions of whole outer surface of the tampon fluid pervious and thereby the outer surface absorbency is increased.

It appears Applicant is arguing that because Schoelling discloses that some portions of the outer surface are fluid pervious and some portions are impervious, Schoelling does not teach increasing the outer surface area for absorption of fluids. This is not persuasive because the tampon's entire surface absorbency is increased by means of the recessed portions; Schoelling teaches increased absorption for the outer surface of the tampon thus inevitably and necessarily the whole outer surface is contemplated.

As noted *supra*, the features upon which applicant relies, i.e., the whole outer surface of the instant claimed tampon is fluid pervious, are not recited in the rejected claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman  
Examiner, Art Unit 3761  
04/12/06

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TATYANA ZALUKAEVA  
SUPERVISOR / PRIMARY EXAMINER  
